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December 21, 1983

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ARIZONA ATTORNEY GENERAL

The Honorable Bev Hermon
State Capitol, House Wing
1700 West Washington
Phoenix, AZ 85007

Re: I83- 140 (R83-105)

Dear Representative Hermon:

You have asked for an opinion concerning the constitutionality of a statute which would allow tax deductions for expenses for public and private education.^{1/} For the reasons set forth below, we conclude that such a statute would not violate the establishment of religion clauses of the Arizona Constitution or the United States Constitution.

The federal constitutionality of such a statute was recently resolved in Mueller v. Allen, ____ U.S. ____, 103 S. Ct. 3062 (1983), wherein the United States Supreme Court held

1. You have specifically referred to a Minnesota statute which permits the taxpayer to deduct from his or her computation of gross income "[t]he amount he has paid to others, not to exceed \$500 for each dependent in grades K to 6 and \$700 for each dependent in grades 7 to 12, for tuition, textbooks and transportation of each dependent in attending an elementary or secondary school . . . wherein a resident of this state may legally fulfill the state's compulsory attendance laws, which is not operated for profit," "Textbooks" is defined by the statute to exclude "instructional books and materials used in the teaching of religious tenets, doctrines or worship, the purpose of which is to inculcate such tenets, doctrines or worship." Minn. Stat. § 290.09 (22)(1982).

that the particular Minnesota statute in question did not violate the establishment clause of the First Amendment to the United States Constitution.

An important factor in the court's decision was that the income tax deduction was "available for educational expenses incurred by all parents, including those whose children attend public schools and those whose children attend non-sectarian private schools or sectarian private schools." 103 S. Ct. at 3068.^{2/}

Because Arizona's approach to analyzing its constitutional provisions prohibiting the establishment of religion^{3/} is the same as that followed by the United States Supreme Court in analyzing the First Amendment Establishment Clause, we believe the same result reached under the United States Constitution would be reached under Arizona's constitutional provisions. See Community Council v. Jordan, 102 Ariz. 448, 432 P.2d 460 (1967); Pratt v. Arizona Board of Regents, 110 Ariz. 466, 520 P.2d 514 (1974); Ariz. Atty. Gen. Op. 182-013.

Therefore, we believe that the Minnesota statute could be enacted in Arizona without violating either the United States or Arizona Constitutions.

2. Other factors important to the court were that (1) the tax benefit was in the form of a genuine tax deduction instead of a tuition grant or a deduction unrelated to the amount actually expended by parents; and (2) the aid was disbursed to parents, rather than to schools directly. 103 S. Ct. at 3068-69.

3. The relevant constitutional provisions in Arizona are Art. 2, § 12, which provides that "[n]o public money or property shall be appropriated for or applied to any religious worship, exercise, or instruction, or to the support of any religious establishment," and Art. 9, § 10, which provides that "[n]o tax shall be laid or appropriation of public money made in aid of any church, or private or sectarian school, or any public service corporation."

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We caution, however, that if changes are made to the statute, a different result might be reached. This would be particularly true if the aid was put in some form other than a tax deduction, if the deduction was only available to parents of children who attend private schools, or if the deduction could be taken for the amount paid for religious textbooks.

Sincerely,



BOB CORBIN
Attorney General

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